

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPHINE SILVA-PEREZ and DEPARTMENT OF VETERANS AFFAIRS,
WEST PALM BEACH MEDICAL CENTER, Palm Beach Gardens, FL

*Docket No. 99-362; Submitted on the Record;
Issued September 19, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request to change attending physicians.

On September 17, 1997 appellant, then a 38-year-old registered nurse filed a claim for a traumatic injury to her lower back on that day. Appellant stated that while trying to transfer a patient from the bed to a wheelchair he grabbed her and pulled on her back. By decision dated November 6, 1997, the Office accepted the claim for lumbosacral strain/sprain. Appellant was treated by doctors at the Veterans Administration Medical Center, mainly by Dr. Arthur Pearl, a Board-certified orthopedic surgeon. Dr. Pearl released appellant to full regular duty on October 21, 1997. Shortly thereafter, appellant complained of continued back pain and was referred to Dr. Louis F. Donaghue, a Board-certified orthopedic surgeon.

Dr. Donaghue initially saw appellant on October 27, 1997. Dr. Donaghue stated that x-rays from the employing establishment basically showed no gross bony abnormalities. He diagnosed low back pain/sciatica. Dr. Donaghue stated that an October 28, 1997 magnetic resonance imaging (MRI) scan of the lumbar spine revealed "degeneration of the intervertebral discs, particularly at L4-5 and L5-S1 with annular bulging at the same levels. There was a small posterolateral disc protrusion at L4-5, which does not efface the neural elements. There is what may be a small annular tear at S-1 posterolaterally on the right side, with no herniation anteriorly." Dr. Donaghue diagnosed lumbosacral strain/sciatica. Dr. Donaghue also stated that the MRI scan showed "nothing is effacing the neural elements. There is no compromise and no stenosis." Dr. Donaghue treated appellant with medication, physical therapy and epidural injections. Dr. Donaghue released appellant to light duty on November 8, 1997. On March 25, 1998 Dr. Donaghue indicated that appellant's accepted condition, lumbosacral strain/sprain, had resolved and that she needed no additional treatment for that condition. Dr. Donaghue also

indicated that he was treating her for nothing other than the injury of September 17, 1997, and recommended she continue on light duty.¹

By letter dated March 25, 1998, appellant requested a change in physicians. Appellant stated, "I am not pleased with the [doctor] they choose for me, Louis F. Donaghue, M.D." Appellant also stated that Dr. Donaghue is not a back specialist.

By letter dated April 20, 1998, the Office denied appellant's request to change physicians. The Office stated that its policy is to allow a change of physician when there is some compelling reason to do so, but that appellant had not provided any reasons to indicate that the treatment she was receiving was other than proper and adequate.²

By letter dated April 17, 1998, appellant requested that she change physicians to Dr. Virgilio Selenga of the Cleveland Clinic Florida in Fort Lauderdale, Florida. By letter dated April 27, 1998, the Office advised appellant that her case had been closed since November 6, 1997 and that if she had experienced a recurrence of disability or a new injury she would need to file another claim.

By letter dated April 22, 1998, appellant stated, "There is an important reason why I need to see another physician." Appellant further stated that Dr. Donaghue did not know that she had an epidurogram and he was rude to her. She stated that she asked him to refer her to a back specialist and he refused. She alleged that Dr. Donaghue did not treat her with respect.

By decision dated June 26, 1998, the Office denied appellant's request to change physicians finding that appellant had already seen more than one qualified physician and had not demonstrated that her physicians were not competent or did not have her best interest at heart.³

The Board finds that the Office properly exercised its discretion in declining to authorize a change in treating physicians.

Section 8103 of the Federal Employees' Compensation Act provides that an employee injured in the performance of duty shall be furnished with the services, appliances and supplies prescribed or recommended by a qualified physician, which are likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.⁴ This section also provides that an employee may initially select a physician to provide medical

¹ Dr. Donaghue noted that appellant requested a new doctor.

² The Office also advised appellant that she could ask her treating physician to refer her to another appropriate specialist for an evaluation.

³ By letter dated August 3, 1998, appellant again requested a change in physicians. She stated that when she returned to Dr. Donaghue's office for a follow-up visit she asked questions about continuous care for her progressive back pain and "I was told by Dr. Donaghue not to return to him since I was, in his opinion, implying I wanted to see another provider." Appellant further stated, "I do not believe this provider has my best interest at heart and I am respectfully requesting consideration for further treatment of my unresolved progressive back pain."

⁴ 5 U.S.C. § 8103.

services, appliances and supplies in accordance with the Office's regulations.⁵ These regulations provide that an employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown.⁶

In the present case, Dr. Pearl, a Board-certified orthopedic surgeon, was the initial physician who treated appellant for her September 17, 1997 accepted lumbosacral sprain/strain. After returning appellant to full regular duty on October 21, 1997, appellant complained of continued pain. Therefore, she was referred to Dr. Donaghue, a Board-certified orthopedic surgeon for a second opinion evaluation. Dr. Donaghue treated appellant with medicine, and physical therapy for her lumbosacral strain/sprain and epidural injections for degeneration of intervertebral discs, and returned appellant to light duty. Both Drs. Pearl and Donaghue are specialist in the area of appellant's accepted condition. As reason for requesting a change of physicians from Dr. Donaghue, appellant stated that the doctor did not remember a particular test that she had undergone and was rude to her. The Office found that appellant had not demonstrated that her physicians were incompetent or did not have her best interest at heart.

The Board finds that Dr. Donaghue provided appellant with proper and adequate care for her accepted condition. On March 25, 1998 Dr. Donaghue stated that no further treatment for her lumbosacral strain/sprain was necessary and that he was at that time mainly treating her for a condition other than the accepted condition. He released appellant and returned her to work with restrictions of no lifting, noting that "[patient] request[s] new doctor."⁷

The Office has the general objective of ensuring that an employee recovers from her injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing the means to achieve this goal.⁸ As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts. The Office evaluated the treatment Dr. Donaghue provided to appellant and concluded that appellant had received proper and adequate care for her lumbosacral strain/sprain.

⁵ *Id.*

⁶ 20 C.F.R. § 10.316.

⁷ Dr. Donaghue indicated that his primary diagnosis, which was given only as 847.2, was not related to the employment injury on September 17, 1997.

⁸ *Billy Ware Forbess*, 45 ECAB 742 (1994), 45 ECAB 157 (1993).

The Board finds that the Office explained its reason for denying authorization to change physicians and there is no evidence of record that the Office acted unreasonably or abused its discretion in refusing to give such authorization.⁹

The decision of the Office of Workers' Compensation Programs dated June 26, 1998 is affirmed.¹⁰

Dated, Washington, DC
September 19, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁹ Appellant had been advised that her case had been closed since November 6, 1997 when it was accepted for a lumbosacral strain/sprain. She was also advised that if she experienced a recurrence of disability she should file a Form CA-2a or if claiming a new injury she should file Form CA-1 or CA-2. It is unknown whether appellant filed a recurrence of disability or a new claim.

¹⁰ The Board notes that page R40 of the record belongs to someone other than appellant in this case.